

Notice of Allowability

Application No.

09/671,524

Examiner

Gordon J Stock

Applicant(s)

SCRIVENS ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 8/2/04.
2. ☒ The allowed claim(s) is/are 1-23.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input checked="" type="checkbox"/> Other <u>PTOL-413B</u> . |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Scott Rittman (Reg. 39,010) on August 17, 2004. Specifically, **claim 1** was amended to remove indefiniteness of terms "first type" and "second type" and to make claim language consistent by using "desired cells or particles" and "larger cells or particles" rather than just – desired cells—and –larger cells--. **Claim 3** was amended to remove indefiniteness of term "said wall." And **claims 14-15** were amended to remove the lack of antecedent basis of limitation by canceling "allowing the sample to flow past each notch in the second compartment" following step (e).

Amended claims:

1.(Currently amended) A method for obtaining a liquid sample forming a monolayer of desired individual cells or particles for optical examination comprising:

a) providing an apparatus comprising:

a sample chamber comprising

two containment walls, at least one of them being transparent for optical examination;

at least one wall for holding said containment walls at a distance, and enclosing an interior space;

a separation wall comprising at least a first [[type of]] separation channel that is of sufficient size and dimensions to allow desired cells or particles to pass while excluding larger cells or particles from passing, and a second [[type of]] separation channel, that is of sufficient size and dimensions to exclude desired cells or particles and larger cells or particles from passing while allowing the liquid component of the sample to pass freely, wherein the interior space of said sample chamber is divided into a first compartment and a second compartment by said separation wall, and whereby the distance between said containment walls in the second compartment in the chamber is sized so that individual desired cells or particles present in the sample will form a monolayer when the chamber is filled with the sample;

a sample entrance into the first compartment; and

a means for venting the sample chamber during filling;

- b) depositing a liquid sample into the sample entrance of said sample chamber;
- c) allowing the sample to flow from the sample entrance into the first compartment;
- d) allowing the sample to advance to the separation wall and to the separation channels therein;
- e) allowing desired cells or particles in the sample to pass through the first [[type of]] separation channel[[s]] in the separation wall and allowing the liquid component of the sample to pass through the second [[type of]] separation channel[[s]] in the separation wall;

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- f) allowing the passed sample portion to continue advance until it reaches and stops at the end of the sample chamber; and
- g) obtaining a liquid sample forming a monolayer of desired individual cells or particles.

3.(Currently amended) The method according to Claim 1 wherein in step (a) of said method, said apparatus provided therein further comprises a moat surrounding the sample chamber to allow for adequate venting of air through a multiplicity of venting-channels in said at least one wall for holding said containment walls at a distance, while said sample chamber fills with liquid.

14.(Currently amended) The method according to Claim 10 further comprising after step (c), allowing the sample to flow past each notch in the first compartment[[; and after step (e), allowing the sample to flow past each notch in the second compartment]].

15.(Currently amended) The method according to Claim 11 further comprising after step (c), allowing the sample to flow past each notch in the first compartment[[; and after step (e), allowing the sample to flow past each notch in the second compartment]].

Allowable Subject Matter

2. **Claims 1-23** are allowed.

3. The following is an examiner's statement of reasons for allowance:

As to **claim 1**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a method for obtaining a liquid sample forming a monolayer of desired individual cells or particles providing the apparatus comprising the separation wall comprising at

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least the first particular separation channel and the second particular separation channel, in combination with the rest of the limitations of **claims 1-23**.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Fax/Telephone Numbers

If the applicant wishes to send a fax dealing with either a proposed amendment or a discussion with a phone interview, then the fax should:

- 1) Contain either a statement "DRAFT" or "PROPOSED AMENDMENT" on the fax cover sheet; and
- 2) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Papers related to the application may be submitted to Group 2800 by Fax transmission. Papers should be faxed to Group 2800 via the PTO Fax machine located in Crystal Plaza 4. The form of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Machine number is: (703) 872-9306

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon J. Stock whose telephone number is (571) 272-2431.

The examiner can normally be reached on Monday-Friday, 10:00 a.m. - 6:30 p.m.

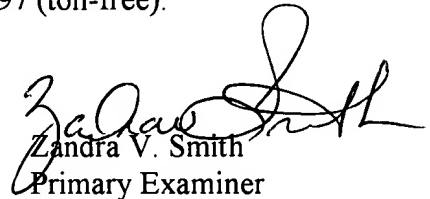
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr., can be reached at 571-272-2800 ext 77.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gs

August 17, 2004


Zandra V. Smith
Primary Examiner
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